

STATE OF MICHIGAN
COURT OF APPEALS

In re KRAEHNKE, Minors.

UNPUBLISHED
December 11, 2014

Nos. 322594; 322595
Monroe Circuit Court
Family Division
LC No. 12-022805-NA

Before: DONOFRIO, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

In these consolidated appeals, respondents H. Kraehnke (“respondent-father”) and C. Kraehnke (“respondent-mother”) appeal as of right from the trial court’s order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Respondent-mother’s parental rights were also terminated pursuant to subsection (3)(l). We affirm.

In July 2012, the Department of Human Services (DHS) received a complaint that respondents’ three minor children were living in deplorable conditions and were not adequately supervised. Respondent-mother had a prior history with DHS, and her parental rights to another child were previously terminated. After the July 26, 2012 complaint, petitioner provided limited services designed to remedy the home conditions, which included assistance with following a financial budget. However, respondents were subsequently evicted from their trailer on the day that respondent-mother gave birth to the couple’s fourth child. The caseworker also learned that respondents had substantial outstanding utility bills. After they were evicted, respondents attempted to move the family into a four-bedroom trailer with respondent-father’s brother, but they failed to comply with the mobile home park’s procedures, and the children were removed and placed in foster care.

Respondents were provided with a case service plan. However, the service providers opined that respondents did not complete the service plan and did not benefit from services. During supervised visitation, respondents failed to maintain control over and supervise the four children, placing them at risk of harm. Initially, respondents engaged their children during visitation. However, respondent-mother appeared to attend playgroup to visit with other parents. Because of the lack of progress, the caseworker never recommended unsupervised visitation. Four different service providers attempted to compile a budget for respondents. However, the couple failed to track their spending and receipts, and failed to make partial payments on the outstanding utility bills, essentially ensuring that they could not obtain permanent housing.

Respondents' psychological evaluations, conducted by Dr. Thomas Muldary, indicated that respondent-mother was self-centered, impulsive, and undependable, and that respondent-father was not cognitively motivated to effectively parent. The children were diagnosed with stress and reactive disorders and engaged in harmful and abnormal behaviors, but substantially improved in therapy and their structured foster care environments. However, the three older children regressed to prior harmful behaviors before and after visits with respondents. Following a termination hearing conducted 18 months after the children were removed from respondents' care, the trial court found that statutory grounds for termination were established with respect to all four children and concluded that termination of respondents' parental rights was in the children's best interests.

Both respondents now argue that the trial court clearly erred in finding that the statutory bases for termination were established, and in finding that termination of their parental rights was in the children's best interests. We disagree.

I. APPLICABLE LAW AND STANDARD OF REVIEW

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). Here, the trial court found that the following provisions of MCL 712A.19b(3) were established by clear and convincing evidence

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

* * *

(l) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

The trial court found that MCL 712A.19b(3)(c)(i), (g), and (j) were applicable to both respondents, and that MCL 712A.19b(3)(l) was applicable only to respondent-mother. However, “only one statutory ground for termination must be established for each parent[.]” *In re Laster*, 303 Mich App 485, 495; 845 NW2d 540 (2013). Therefore, when one ground for termination is established by clear and convincing evidence, this Court need not address other grounds for termination. *In re Utrera*, 281 Mich App 1, 24; 761 NW2d 253 (2008).

Once a statutory ground for termination has been proven, the trial court must determine whether the petitioner has proven by a preponderance of the evidence that termination is in the child’s best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App at 90. Factors to consider include the respondent’s past history, psychological evaluations, parenting techniques during parenting time, domestic violence, the age of the child, visitation and meaningful contact, family bond, participation in treatment plan and counseling, and the foster environment and potential for adoption. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). The child’s need for permanency, stability, and finality is also a consideration. *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012).

“We review for clear error a trial court’s finding of whether a statutory ground for termination has been proven by clear and convincing evidence.” *In re Moss*, 301 Mich App at 80; see also MCR 3.977(K). Whether termination of parental rights is in the best interests of the child is also reviewed for clear error. *In re Laster*, 303 Mich App at 496. “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *Id.* at 491 (citation omitted).

II. DOCKET NO. 322594 (RESPONDENT-FATHER)

Respondent-father argues that the trial court erred in finding that MCL 712A.19b(3)(c)(i), (g), and (j) were established because he obtained suitable housing with a relative, demonstrated that he could manage his finances, and improved his parenting skills. Initially, we note that the trial court did not give credence to the testimony provided by respondent-father and his witnesses, and instead relied on the testimony of the various service providers, who opined that respondent-father’s proposed housing was not acceptable, that he continued to be unable to manage his finances, and that there were still significant issues with his parenting abilities. This Court gives due regard to the “opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011); see also MCR 2.613(C). Moreover, although respondent-father participated in services and satisfied some aspects of his service plan, mere satisfaction of terms of an agency agreement or case service plan does not necessarily warrant return of a child. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). Rather, “benefitting from the services [is] an inherent and necessary part of the compliance with the case service plan.” *Id.* at 677.

With respect to MCL 712A.19b(3)(c)(i), the trial court assumed jurisdiction over the children because of inappropriate housing and supervision, the children’s poor hygiene, and the failure to budget appropriately causing delinquency and housing issues. Respondent-father’s contention that he resolved the housing issue is not supported by the record. Respondent-father

moved four times after the children were placed in care. It was learned that respondent-father had poor credit, multiple evictions and monetary judgments arising from the evictions, and outstanding utility bills. The service providers testified that the failure to make partial payments on the outstanding utility bills and address the poor credit rating precluded respondent-father from securing acceptable housing. Although respondent-father obtained housing with a relative, he conceded that it was only temporary, and the trial court reasonably found that the housing was inappropriate because it involved 10 people and six pets living in a four-bedroom, two-bathroom trailer.

Further, the record indicates that the problems involving the children's poor hygiene and lack of supervision had not been resolved. Visitation was supervised by service providers who were required to intervene to prevent harm from coming to the children during visitation and public outings. The caseworker preferred to have visits at a Cabela's because of safety concerns. Because of the lack of improvement, respondent-father never progressed to unsupervised visitation. The service providers and foster parents noted that the children returned from visits in soiled clothing and dirty diapers, and questioned the sufficiency and nutritional value of the food and drinks given to the children in light of their ages.

Respondent-father's contention that he addressed his finances also is not supported by the record. To his credit, respondent-father was employed and secured a higher paying job while the case was pending. However, the budgets prepared by the various service providers were not followed. Respondent-father was never able to follow a budget or collect his receipts and track his spending. Although it was represented that payments were made on a storage facility containing new beds for the children, the contents were sold at auction for non-payment. The budget prepared by the service providers designated funds for new housing and payment of the outstanding utility debt to secure new housing. However, respondent-father failed to save for the first month's rent and the security deposit and failed to arrange for utility service, which was fatal to establishing new housing. These deficiencies demonstrated that respondent-father had not benefitted from services and could not provide proper care or custody within a reasonable time in light of the fact that the children had been in care for 18 months. Accordingly, the trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i) was established by clear and convincing evidence.

Although it is unnecessary to address MCL 712A.19b(3)(g) and (j) in light of our determination that MCL 712A.19b(3)(c)(i) was established by clear and convincing evidence, *In re Utrera*, 281 Mich App at 24, we briefly note that the trial court did not clearly err in finding that termination was also warranted pursuant to MCL 712A.19b(3)(g) and (j). The evidence of respondent-father's limited participation in the case service plan and lack of benefit demonstrated that he could not provide proper care and custody within a reasonable period of time. Further, the evidence that respondent-father continuously detached himself from responsibility for hazardous and unsafe conditions that surrounded the children, and his inattention to and inappropriate treatment of the hygiene problems demonstrated that the children were reasonably likely to be harmed if returned to his home.

The trial court also did not clearly err in finding that termination of respondent-father's parental rights was in the children's best interests. Respondent-father had a history of housing and budget issues that he failed to address despite the provision of services. His psychological

evaluation indicated that he lacked introspection and the motivation to change. Respondent-father denied any involvement in the conditions that led to the children's removal and accepted respondent-mother's denial that either the children or the home were dirty. During visitation, respondent-father failed to practice the skills learned during parenting classes and could not demonstrate that he could keep the children safe. The children's home condition when living with respondents was startling and the children entered their foster care placements with serious emotional and behavioral issues. But their conduct improved, and they were thriving in their foster care environments of structure and discipline, which respondent-father was unable to provide. Their prospective adoptions, and need for permanency and stability, favored termination of parental rights. Accordingly, the trial court did not clearly err in finding that termination of respondent-father's parental rights was in the children's best interests.

III. DOCKET NO. 322595 (RESPONDENT-MOTHER)

Respondent-mother argues that the trial court clearly erred in finding that MCL 712A.19b(3)(c)(i), (g), and (j) were each established, but concedes that MCL 712A.19b(3)(l) was established because her parental rights to a prior child from another relationship were previously terminated. In light of this concession, and because only one statutory ground for termination is necessary, it is not necessary to consider the remaining statutory grounds. *In re Utrera*, 281 Mich App at 24. Nonetheless, we note that the trial court did not clearly err in finding that termination was warranted pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Respondent-mother alleged that she cured the deficiencies in housing, supervision, hygiene, and finances that served as the factual bases for termination. However, the trial court did not clearly err in finding that the housing with a relative was inappropriate, or in adopting the testimony of the service providers regarding the insufficient supervision, failure to apply parenting skills, and failure to consistently address the children's diapers. The court also did not clearly err in finding that the financial barriers could not be remedied by bankruptcy in light of the demonstrated inability to save money or prepare and follow a budget.

The trial court also did not clearly err in finding that termination of respondent-mother's parental rights was in the children's best interests. Respondent-mother was the primary caregiver when jurisdiction over the children was obtained. The home was dirty and infested with fleas, and the children were dirty with soiled diapers. Respondent-mother stated that she did not like to change diapers. There was no indication that this problem was remedied. During supervised visitation, respondent-mother did not demonstrate the ability to keep track of all four children, and the children's safety and well-being was at risk during public, park, and fair outings. The trial court noted that these were not isolated incidents. Respondent-mother acknowledged that she was unable to care for all four children in public places, and would not undertake any public outings without assistance.

Respondent-mother claims that termination was not in the children's best interests because she satisfied and benefitted from her case service plan, but the trial court did not clearly err in holding to the contrary. The court noted the failure to complete and benefit from parenting classes and the failure to eliminate the financial barriers. Dr. Muldary's conclusion that respondent-mother was self-centered and focused on her own needs was evidenced by the fact that she focused on a dart league and her vow renewal ceremony instead of paying a fee to return to her employment, pay down her debt, and find permanent housing. The children's foster

homes provided a structured environment that addressed the children's medical and psychological needs with the potential for adoption. Thus, the trial court's conclusion that termination of respondent-mother's parental rights was in the children's best interests was not clearly erroneous.

Affirmed.

/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood
/s/ Douglas B. Shapiro